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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/816,371

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Christoph Becke

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INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/816,371	Applicant(s) BECKE ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A new final Office action is being submitted in order to correct an inconsistency in the final Office action dated August 20, 2007. In that action, the "less than half the depth" limitation was rejected under both 102 (b) and 103 rejections (claim 9 rejected under 102(b) and claim 16 under 103). Claims 9 and 16 should have been rejected using both these statutes under the 102/103 provision. See rejection below. Delay in presenting this rejection is sincerely regretted.

Terminal Disclaimer

The terminal disclaimer filed on March 11, 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of D483,384 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Objections

Claim 9 is objected to because of the following informalities: the whereby clause at the end of the claim appears to be redundant. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 12, 13 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gentz (2,074,785). Gentz teaches a refrigerator (Fig. 1) having a door with a first door storage compartment (35) and a second door storage compartment (34, Fig. 4; see Attachment A of previous Office action) comprising: at least one first generally boxed storage compartment portion (a) having a full first horizontally-directed depth (b) and a first vertically-directed storage depth (c); and at least one second generally boxed shaped storage compartment portion (d) having a front wall (front bars), the second storage compartment portion having a second horizontally-directed depth (e) being less than the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth (c also) substantially the same as the first vertically-directed storage depth (c). The compartment portions are separated by an intermediate wall (39). In the specification of Gentz, it is stated that the smaller basket portion (d) is "substantially" one-half the width of the larger portion (a; see page 2, column 1, lines 9-13); therefore, it conceivably could be on the smaller side of that half the width. However, even if this

could not be assumed or considered inherent, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the second compartment as desired, including forming its second portion with a smaller depth, depending on the desired need of the person designing/constructing the portion (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gentz. As stated above, Gentz teaches the limitations of claim 9, including two portions of a compartment with substantially equal lengths, the portions having different depths. Note: in Fig. 4, the length of the smaller portion (d) appears to be a bit longer than the larger portion (a); however, nothing is stated in the specification to support this assumption. For claim 11, Gentz fails to specifically teach that the portions have different lengths. However, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the portions as desired, including forming them with different lengths, depending on the desired need of the person designing/constructing the compartment (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

Allowable Subject Matter

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 17 and 18 are allowed. The allowable subject matter being a refrigerator having a door with door storage compartment comprising: at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth; and at least one second storage compartment portion having a sloped front wall extending angularly downwardly between an access opening and a base of the second storage compartment portion, the base defining an smaller area than the access opening, the second storage compartment portion having a second horizontally- directed depth being less than half of the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth.

Response to Arguments

Applicant's arguments filed March 11, 2008 have been fully considered but they are not persuasive.

Addressing the arguments concerning the rejections over Gentz,: first, looking at the 102(b) interpretation of claims 9 and 16, Gentz teaches a smaller basket portion that is stated as being "substantially" one-half the width of the larger portion (see page 2, column 1, lines 9-13); therefore, it conceivably can be on the smaller side of that half the width, thus meeting the "less than half the width" limitation in the claims. Second, if looking at the 103 interpretation, it is contended that it would have been an obvious

design consideration to dimension the second compartment of Gentz as desired, including forming its second portion with a smaller depth, depending on the desired need of the person designing/constructing the portion (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc. Furthermore, the reason for the modified width/depth does not have to be the same as that of applicant's (Note: the lower shelf and bottles are not even claimed), intended storage use and aesthetics being a couple of reasons to design a storage compartment in a certain manner with a certain depth. Third, the examiner argues that Gentz does teach generally box compartments (see Fig. 1; forward, bottom and rear rails form box shapes) divided by a member (39; see Fig. 4). The fact that the member is below the basket portions is irrelevant. The claim only requires an intermediate wall there between that separates them. Gentz's divider performs this function. That applicant's wall strengthens the shelf is not claimed.

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637

Wilkens
June 1, 2008